

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department on its own	)	
Motion as to the propriety of the rates and	)	
charges set forth in M.D.T.E No. 17, filed with )		
the Department on May 5, 2000 and June 14, 2000 )		<b>D.T.E. 98-57, Phase III</b>
to become effective October 2, 2000 by New )		
England Telephone and Telegraph Company )		
d/b/a Bell Atlantic – Massachusetts )		
	)	

**REPLY COMMENTS OF VERIZON MASSACHUSETTS**

Verizon Massachusetts’ (“Verizon MA”) is responding to comments filed by AT&T Communications of New England, Inc. (“AT&T”) and Covad Communications Company (“Covad”) on April 9, 2002, regarding Verizon’s recent notice of its first-office application of a packet switching offering of Digital Subscriber Line (“DSL”) access service in at least one Massachusetts remote terminal (“RT”) in late 2002. As explained in network disclosure documentation made available to competitive local exchange carriers (“CLEC”) in February 2002, this PARTS-like offering will utilize Asymmetrical DSL (“ADSL”) technology<sup>1</sup> with an integrated, Verizon-provided DSL line card, not CLEC-provided line cards, at the RT.

In their comments, Covad and AT&T make numerous misleading and unsubstantiated claims about Verizon’s conduct and its roll-out of this DSL offering. They also reargue issues,

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<sup>1</sup> ADSL service specifically provides a high-speed, packet data connection, rather than a circuit-switched, dial-up connection. Like DSL transport services, this type of packet service will be used

such as unbundling, TELRIC pricing, and line card collocation, that were already addressed and briefed in D.T.E. 98-57, Phase III. Those *same* issues are pending before the Federal Communications Commission (“FCC”) in various proceedings.<sup>2</sup> Likewise, Covad and AT&T seek to impose unnecessary requirements on Verizon MA as a condition of deployment of its PARTS-like offering.<sup>3</sup>

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primarily to connect to the Internet.

<sup>2</sup> Recently, the FCC initiated proceedings to examine whether broadband services should be classified as an “information service,” and/or whether they should be subject to Title I or Title II regulation. See *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities and Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, and *Computer III Further Remand Proceedings*, CC Docket Nos. 95-20, 98-10, FCC 02-42, *Notice of Proposed Rulemaking*, ¶¶ 17, 24-27 (rel. Feb. 15, 2002) (“*Broadband NPRM*”) (in which the FCC tentatively classifies wireline broadband Internet access services, such as DSL, as “information services”). See also *Review of Regulatory Requirements for Incumbent LEC Broadband Services; SBC Petition for Expedited Ruling That it is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, CC Docket No. 01-337, FCC 01-360, *Notice of Proposed Rulemaking*, 16 FCC Rcd 22745 (rel. Dec. 20, 2001) (“*Incumbent LEC Broadband Notice*”) (examining whether incumbents that are dominant in the provision of traditional local exchange and exchange access service should also be considered dominant when they provide broadband telecommunications services).

In addition, the FCC is currently addressing, *inter alia*, incumbent local exchange carrier (“ILEC”) obligations under section 251 of the Telecommunications Act of 1996 (the “Act”) to make their facilities available as unbundled network elements (“UNE”) to competitive carriers for the provision of broadband services. See *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Notice of Proposed Rulemaking*, FCC 01-361, 16 FCC Rcd 22781 (rel. Dec. 20, 2001) (“*Triennial UNE Review Notice*”). Issues relating to the terms and conditions under which ILECs would be required to offer advanced services are also raised in the context of pending legislation, *i.e.*, H.R. 1542, The Tauzin-Dingell Internet Freedom and Broadband Deployment Act of 2001. That bill, which passed the House of Representatives by an overwhelming majority (273-157) on February 27, 2002, would preclude collocation at the RT and unbundled packet switching. The FCC is also considering the issue of unbundled packet switching and line card collocation in *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Sixth Notice of Proposed Rulemaking, CC Docket No. 98-147 and 96-98 (rel. Jan. 19, 2001) (“*Line Sharing Reconsideration Order*”), at ¶ 56. Accordingly, it would be premature for the Department to rule on these *same* issues prior to the FCC’s resolution of such matters in these pending dockets.

<sup>3</sup> For example, Covad’s contention that Verizon MA should be required to provide more than 90-days notice to CLECs before introducing its new DSL offering is unwarranted. Covad Comments, at 5-6; D.T.E. 98-57 III, Verizon MA’s March 7, 2001, Letter, Attachment. Verizon MA has no legal

The Department should reject Covad's and AT&T's allegations as erroneous and their demands as obvious delaying tactics intended to derail Verizon's initial DSL offering in Massachusetts. As explained in Verizon MA's April 9, 2002, letter in this proceeding, no intrastate tariff is required for the Company to offer its first-office application for DSL services at an RT in Massachusetts because ADSL services used primarily to connect to packet-switched, Internet traffic are considered predominantly "interstate" for jurisdictional purposes.<sup>4</sup> Therefore, no further action is required of the Department in this proceeding to allow Verizon MA to proceed with its first-office application of PARTS-like service pursuant to a federally filed tariff.

## **I. ARGUMENT**

### **A. Covad and AT&T Distort the Facts By Claiming that Verizon Did Not Adequately Inform CLECs of Its Plans to Offer a PARTS-Like Service.**

Contrary to Covad's and AT&T's claims, Verizon reasonably informed CLECs of its efforts to develop and deploy this remote-based DSL offering through direct communications

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obligation to notify CLECs prior to offering new retail services, and should not be required to provide more than 90 days notice before offering broadband services. This is particularly true because Verizon MA is not the predominant provider in the broadband market; rather, the market leaders are cable companies, such as AT&T Broadband, and wireless and satellite providers, as recognized by the FCC. *See* VZ MA Initial Brief, at 15; VZ MA Reply Brief, at 5-6.

Similarly, AT&T's request that Verizon MA be required to respond to discovery relating to such issues as line card collocation and Project Pronto (a non-Verizon service) is unfounded. *See* AT&T Comments, at 9, 11. Such discovery is irrelevant to Verizon's PARTS-like service offering, which uses Verizon-provided line cards. Moreover, as discussed in Verizon MA's April 9, 2002, letter, this offering is more appropriately tariffed at the federal level based on longstanding FCC precedent regarding the jurisdictional nature of ADSL-type services.

<sup>4</sup> It is well-established that such services would be treated as "interstate" based on the "end-to-end" nature of the communication. *See In the Matter of Bell Atlantic Telephone Cos., et al*, CC Docket No. 98-103, FCC 98-317, *Memorandum Opinion and Order*, 13 FCC Rcd 23667 (1998); *see also In the Matter of GTE Telephone Operating Cos.*, CC Docket No. 98-79, FCC 98-292, *Memorandum Opinion and Order* (rel. Oct. 30, 1998).

with CLECs and during the course of state regulatory proceedings on this subject, in which CLECs participated. Verizon held two region-wide industry workshops or forums in New York – one on February 6 and March 21, 2001 - to discuss this potential offering and solicit CLEC input. Verizon provided documentation to CLECs at both meetings, including a draft service description, technical implications, operational issues, and an illustrative price structure.<sup>5</sup> Verizon also sought input from CLECs on prioritization of potential RTs. Although numerous CLECs attended those forums, only *one* CLEC provided input on potential RT sites.

In addition to providing CLECs with available materials at those two forums, Verizon customarily communicated information to CLECs via electronic mail and through postings to the Company's website. For example, on March 24, 2001, Verizon posted information to its website regarding planned Next Generation Digital Loop Carrier systems ("NGDLCs") that might be equipped for a PARTS-like offering. That list was subsequently updated on June 22, 2001, and later in November 2001. During this period, Verizon also had discussions with CLECs individually regarding a potential PARTS-like offering. At the same time, Verizon was actively involved in various regulatory proceedings in California (Docket No. R93-04-00/1), New Jersey (Docket No. TO-00060356) and Massachusetts (D.T.E. 98-57, Phase III) investigating DSL service at RTs, and publicly informed carriers and regulators alike of the status of a potential PARTS offering during the course of those proceedings.

In June 2001, the FCC deferred Verizon's request to own advanced services equipment that would enable the Company to perform first-office application testing for a

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<sup>5</sup> These materials were posted on [http://www.bellatlantic.com/wholesale/html/ie\\_workshops.htm](http://www.bellatlantic.com/wholesale/html/ie_workshops.htm) at the time of the industry forums.

PARTS-like offering. Accordingly, in July 2001, Verizon petitioned the FCC to accelerate the reintegration of VADI.<sup>6</sup> The FCC granted Verizon's petition in August 2001, thereby enabling the Company to evaluate deployment of a PARTS-like offering. Although this evaluation process was temporarily suspended following the events of September 11<sup>th</sup>, that process resumed and - in late 2001 - budget approval was given for a limited deployment of a PARTS-like offering during 2002.

On February 20, 2002, shortly after a business decision was made to proceed with a first-office application for a DSL offering in Massachusetts, Verizon notified CLECs by electronic mail of this development and provided appropriate network disclosures. *See* D.T.E. 98-57 III, Verizon MA's March 7, 2002, Letter, Attachment. That material describes the nature of the offering, technical requirements and references to other relevant documents relating to interface specifications. As future RTs are determined, Verizon will similarly notify CLECs.

Finally, since its announcement of the first-office application, Verizon has made available to CLECs on an ongoing basis additional administrative, technical, operational and other network and process-related information associated with the introduction of this service. This includes, *inter alia*, Change Control rules for ordering the PARTS-like offering,<sup>7</sup> which were

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<sup>6</sup> It should be noted that the Department's requirement that Verizon notify and make packet switching available to CLECs and VADI simultaneously was established *before* the reintegration of VADI. *Phase III Order*, at 88-89; *Phase III-A Order*, at 43-45. Because circumstances have now changed, and Verizon no longer offers broadband services via a separate data affiliate, that requirement should no longer apply.

<sup>7</sup> Verizon's website [[http://128.11.40.241/east/wholesale/customer\\_docs/master.htm](http://128.11.40.241/east/wholesale/customer_docs/master.htm)] posted these documents. It should be noted that as part of the Merger Conditions (¶12), Verizon's retail operations "shall use the same interfaces available to CLECs for processing a substantial majority (*i.e.*, at least 75 percent of pre-order inquiries and at least 75 per-cent of orders) of Advanced Services orders."

made available to CLECs on April 3, 2002, on Verizon's website. Verizon will also be conducting a meeting with CLECs to address any issues regarding to PARTS-related materials posted to the website. Accordingly, contrary to Covad's and AT&T's claims, Verizon's course of conduct has been reasonable and appropriate in communicating its plans to CLECs throughout the development and deployment processes.

**B. Covad and AT&T Incorrectly Contend that Unbundling Of Packet Switching Is Required by the FCC and Should Be Imposed in Massachusetts.**

In their comments, Covad and AT&T reargue that Verizon MA is required to unbundle packet switching and offer a PARTS-like service at TELRIC prices. Covad Comments, at 2-3; AT&T Comments, at 7-11. As explained in detail in its Initial and Reply Briefs in this proceeding, those arguments are without merit. VZ MA Initial Brief, at 14-21; VZ MA Reply Brief, at 4-8.

Verizon MA is not legally obligated under the Act and FCC regulations to provide packet switching as a UNE at this time. Indeed, the FCC in its *UNE Remand Order*<sup>8</sup> expressly declined to unbundle packet switching. In determining not to unbundle packet switching, the FCC considered the following factors: the widespread availability of advanced services equipment (*e.g.*, packet switches and DSLAMs); the collocation and interconnection costs that CLECs may incur without access to unbundled ILEC packet switching facilities; the fact that ILECs do not retain a monopoly position in the advanced services market; and public

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<sup>8</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("*UNE Remand Order*"), at ¶¶ 306-17.

policy considerations, *i.e.*, the need to preserve some incentive to ILECs to continue to build new networks. *Id.* at ¶¶ 306-309.

Stressing its “concern that we not stifle burgeoning competition in the advanced services market,” the FCC noted that “regulatory restraint on our part may be the most prudent course of action in order to further the Act’s goal of encouraging facilities-based investment and innovation.” *UNE Remand Order*, at ¶ 316; *see* VZ MA’s Initial Brief, at 15-16. The FCC reiterated this position in its *Incumbent LEC Broadband Notice*, stating that broadband service should exist in a “minimal regulatory environment that promotes investment and innovation in a competitive market.” *Incumbent LEC Broadband Notice*, at ¶ 5. Likewise, more recently, the FCC stated that it is “mindful of the need to minimize both regulation of broadband services and regulatory uncertainty in order to promote investment and innovation in a competitive market.”<sup>9</sup>

The most appropriate regulatory climate to incent broadband deployment and foster competition is one in which Verizon is not burdened with operational requirements and pricing rules that merely enhance the cable providers’ advantages in the market. This means that Verizon should not be required to unbundle packet switching and should not be limited to TELRIC pricing. Rather, Verizon must be allowed to charge compensatory rates that are commensurate with the considerable investment and risks involved. VZ MA Reply Brief, at 6-7.

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<sup>9</sup> *See Internet over Cable Declaratory Ruling*, FCC 02-77, GN Docket No. 00-185 (rel. Mar. 15, 2002), at ¶ 73.

AT&T contends that states have the authority under the *UNE Remand Order* to require unbundled packet switching, and cites the Illinois Commerce Commission's September 26, 2001, order regarding Ameritech's Project Pronto (DSL) service in support of its claims. AT&T Comments, at 7-8. This is incorrect.<sup>10</sup> The FCC's *UNE Remand Order* provides that "[a] state commission is empowered to require incumbent LECs to unbundle specific network elements used to provide frame relay service." *UNE Remand Order*, at ¶ 312. The FCC does not extend that authority to include DSL services. This is supported by the fact that the FCC is currently considering the issue of unbundled packet switching in various pending proceedings.<sup>11</sup> See footnote 2 *supra*.

Although the FCC declined to unbundle packet switching as a general matter, the FCC created a narrow exception for unbundling where *each* of the following four conditions are satisfied:

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system *in which fiber optic facilities replace*

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<sup>10</sup> Ironically, as a result of the Illinois Commission's decision, SBC discontinued further deployment of its Project Pronto offering due to the adverse regulatory climate, thereby limiting the expansion of broadband Internet access -.

<sup>11</sup> On April 5, 2002, Verizon filed comments addressing that issue and the ramifications of an unbundling requirement on the development of broadband services in the FCC *Triennial UNE Review Notice*. In those Comments, Verizon stated that "[t]here can be no doubt that unbundling is a disincentive to investment," and "the problem is only further compounded by the Commission's current TELRIC pricing rules." Verizon Comments, at 27, 30. The ILEC incurs more of the risks and reaps fewer rewards as "new technologies move potential points of interconnection out of the central office ... and farther into the network, where collocation arrangements are decreasingly available and/or more costly." *Id.* at 30. Under those circumstances, unbundling at TELRIC prices will reduce the ILEC's incentives and ability to invest in innovative new technologies and services. *Id.* at 32. Therefore, to promote deployment, ILECs must be fairly compensated. Further, one-sided regulatory burdens should not be imposed on ILECs that are, at best, secondary players in a broadband market where cable companies dominate.



*copper facilities in the distribution section* (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

(ii) There are *no* spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

(iii) The incumbent LEC *has not permitted* a requesting carrier to deploy a *Digital Subscriber Line Access Multiplexer* at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and

(iv) The incumbent LEC has deployed packet switching capability *for its own use*.<sup>12</sup>

Any state action regarding unbundling must be consistent with those principles, and any modifications to unbundling principles, as determined by the FCC. *See e.g., Phase III Order*, at 88. Even if the above mandatory conditions were to apply to Verizon MA's designated RT location in Massachusetts,<sup>13</sup> the Company's first-office application of DSL service would not be subject to the FCC's narrow unbundling exception because all of those FCC requirements would not be met.<sup>14</sup> VZ MA Initial Brief, at 16-19. This nullifies Covad's and AT&T's

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<sup>12</sup> 47 C.F.R. § 51.319(c)(5) (emphasis added).

<sup>13</sup> The unbundling requirements under Section 251 of the Act were designed to provide a transition from a monopoly environment to facilities-based competition. They should *not* apply to advanced services because of the competitive nature of the broadband market, which enables carriers to provide services without relying on ILEC facilities. *See* VZ MA Reply Brief, at 4; *see also* FCC *Triennial UNE Review Notice*, Verizon's Comments, at 89 (Apr. 5, 2002) (in which Verizon seeks the FCC's elimination of those four conditions that provide an exception to the FCC's holding not to unbundle packet switching when the ILEC has deployed DLCs). Therefore, Verizon MA should not be required to offer a packet switching UNE because the lack of access to unbundled packet switching would not impair CLECs. As stated by the U.S. Supreme Court, the FCC "cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network" *See AT&T v. Iowa Util. Board*, 525 U.S. 366, 388-89 (1999) (holding that the FCC cannot mandate unbundling if the statutorily defined impairment test is not satisfied); *see also* VZ MA Initial Brief, at 13-14.

<sup>14</sup> For example, Verizon MA provides for line and station transfers, which give CLECs access to available spare copper loops capable of supporting xDSL services. VZ MA Initial Brief, at 17. Therefore, a CLEC can provide xDSL services to an end user customer served by a fiber-fed loop

argument that Verizon MA should be required to unbundle packet switching at TELRIC prices at that site, thereby bearing all the economic and regulatory risk of deploying the new network technology necessary to offer PARTS-like service.

**C. Covad and AT&T Incorrectly Conclude that Verizon MA Should Provide Line Card Collocation As Part of Its DSL Offering in Massachusetts.**

Covad and AT&T reargue in their comments that Verizon MA should be required to provide line card collocation at RTs (*e.g.*, the so-called “plug and play” option). Covad Comments, at 2-3; AT&T Comments, at 7-11. That argument is fallacious. No regulatory commission – not even the Illinois Commerce Commission cited by AT&T in its comments – has mandated line card collocation. Moreover, as discussed by Verizon MA in its Initial and Reply Briefs in this proceeding, CLEC-provided line cards cannot be required because line cards do not qualify as collocated equipment under the Act and do not satisfy the “necessary” and “impair” test for collocation.<sup>15</sup> VZ MA Initial Brief, at 8-13; VZ MA Reply Brief, at 11-12.

To impose line card collocation also raises serious technical and operational concerns as identified by equipment manufacturers and vendors. For example, in the FCC *Triennial UNE Review Notice*, Alcatel and Catena recently filed comments urging the FCC to reject any line card collocation requirement and the use of foreign (*e.g.*, CLEC-provided) line cards in a NGDLC system. Alcatel further stated that the FCC should take this opportunity to declare

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by migrating the customer to an all-copper loop.

<sup>15</sup> This was also addressed by Verizon in various comments filed in connection with pending FCC proceedings. *See* Verizon’s Comments, CC Docket No. 98-147, filed Oct. 12, 2000; Verizon’s Reply Comments, CC Docket No. 98-147, filed Nov. 14, 2000; Verizon’s Comments, CC Docket No. 98-147, filed Feb. 27, 2001; Verizon’s Reply Comments, CC Docket No. 98-147, filed Mar. 13, 2001.

that NGDLC line cards are not network elements under the Act, and thus not subject to unbundling or collocation requirements.

In their comments, Alcatel and Catena reiterate the significant technical problems resulting from CLEC-provided line cards, which they and other manufacturers and vendors (*e.g.*, Lucent, Copper Mountain, etc.) described during an FCC public forum.<sup>16</sup> As Alcatel testified, because of the need for compatibility with the equipment designed by the manufacturer (vendor), the type of available DSL services and the potential feasibility for product or service differentiation by service provider rests entirely with the manufacturer (vendor). VZ MA Initial Brief, at 29-30. Thus, any “innovation” relating to the line card would be within the discretion of the manufacturer (vendor) – not Verizon and not the CLECs, as AT&T and Covad erroneously allege.

Finally, line card manufacturers have emphasized that they have no ability to produce diverse line cards that meet various carriers’ requirements for insertion into equipment at incumbent’s RTs. VZ MA Initial Brief, at 29-30. Further, to modify their existing systems to support different features for individual CLECs would be extremely costly and inefficient. *Id.*; *see also* Verizon’s Comments, at 93-94 (filed Apr. 5, 2002, *Triennial UNE Review Notice*). Accordingly, the Department should not require line card collocation for Verizon MA’s PARTS-like offering.

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<sup>16</sup> VZ MA Initial Brief, at 30 n.31, *citing* Public Forum: Competitive Access to Next-Generation Remote Terminals (May 10, 2000), <http://www.fcc.gov/ccb/nsd/documents/NEXTGEN.HTML>. For example, manufacturers and vendors testified that each CLEC-furnished line card would need to be compatible with the overall design of the underlying system to be used, including the software. This would paradoxically limit the manufacturers’ ability to differentiate its equipment and achieve diversity in engineering design. Alcatel further testified in California that it is not technically feasible to insert disparate CLEC line cards into its Litespan channel banks at RTs; only line cards

## II. CONCLUSION

As stated in its April 9<sup>th</sup> comments, the Department does not need to take any further action for Verizon MA to introduce its first-office application of PARTS-like service in Massachusetts. Verizon MA will file a federal tariff to address this offering, which is consistent with existing FCC precedent for ADSL services.

In addition, the Department should reject Covad's and AT&T's arguments to investigate further Verizon MA's offering, and to require that Verizon MA offer unbundled packet switching at TELRIC rates and permit the collocation of CLEC-provided line cards at the RTs. As indicated in its Initial and Reply Briefs, Verizon MA is not legally obligated to do so. Likewise, as a broadband facility, packet switching should not be overly regulated. Line card collocation must also be rejected because of the related network and economic inefficiencies, as well as significant administrative, operational and technical concerns.

Respectfully submitted,

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manufactured or licensed by Alcatel could be installed. VZ MA Initial Brief, at 29-31.

